

**TOWN OF HAMILTON
BOARD OF SELECTMEN
JULY 30, 2012**

The Board of Selectmen met at Hamilton Town Hall at 7:00 p.m. on Monday, July 30, 2012 with David Neill, Marc Johnson, Jennifer Scuteri, Jeff Stinson and Jeff Hubbard present. Town Manager Michael Lombardo, Finance Director Deborah Nippes-Mena, Finance Committee chair John McWane, and HW School Committee member Bill Dery also present.

Call to order

Chair David Neill called the meeting to order.

One Day Liquor License – Green Meadows Farm – August 4, 2012

David Neill entertained a motion to approve a One Day Liquor License for Green Meadows Farm on Saturday, August 4, 2012. Jennifer Scuteri so moved. Marc Johnson seconded motion. VOTE: Unanimous.

Public Comment

None.

Recommendation to the Moderator for an Appointment to the Finance & Advisory Committee

Finance & Advisory Committee recently lost two members and is looking for replacements with finance and banking experience. Finance Committee chair John McWane and Town Manager Michael Lombardo had interviewed two candidates for the open slots, one of which was Scott Maddern.

Neill entertained a motion to recommend to the Town Moderator that Scott Maddern be appointed to the Finance and Advisory Committee. Scuteri so moved. Jeff Stinson seconded motion. VOTE: Unanimous.

Close Warrant and Open New Warrant for Special Town Meeting on October 13, 2012

Due to a conflict with PSAT testing at Hamilton Wenham Regional High School where no other activities can occur in the building the same day on October 20, the Special Town Meeting date has been changed to Saturday, October 13. The meeting was rescheduled earlier than the original date to avoid conflict with upcoming musical at High School on October 27.

Discussion ensued about warrant articles that could consist of Community Preservation Committee projects, school bonding, Patton property funding, potentially union contract wage/salaries, appropriation transfer, Hamilton Development Corporation funding, easement for Patton homestead, and possible certification of Excess and Deficiency money for HWRSD. Finance Director Deborah Nippes-Mena noted that warrant would go to printer on September 14 and be mailed to residents on October 1.

Neill entertained a motion to close warrant for October 20, 2012 Special Town Meeting. Johnson so moved. Scuteri seconded motion. VOTE: Unanimous.

Neill entertained a motion to open the new warrant for Special Town Meeting on October 13, 2012. Stinson so moved. Scuteri seconded motion. VOTE: Unanimous.

Town Counsel Appointment

Neill summarized that there has been discussion around Town regarding appointment of Town counsel and whose job it is to make the appointment. He said according to state law, the Town manager shall appoint and may remove all department heads, officers, subordinates and employees under the jurisdiction of the Board of Selectmen. With removal of department heads subject to confirmation and other appointments made with consultation.

Neill noted that there is a conflict about who appoints Town counsel with Hamilton's bylaw where Board of Selectmen have this responsibility but the powers in the state law regarding the Special Act supersede.

He summarized a letter from Town Manager Michael Lombardo where he noted that appointing Town counsel is his decision but he has consented to have the Board of Selectmen consult on this appointment.

Neill also mentioned that decision would be made with public input during the Board's meeting and he required that the discussion be confined to the Urbelis report. He noted that the Urbelis report had been released to the public and that related Selectmen's executive session minutes had been reviewed, redacted and not released.

Neill entertained a motion to make Town Manager Michael Lombardo's three-page document dated July 26, 2012 available to the public. Johnson so moved. Stinson seconded motion. VOTE: Unanimous. Copies of the document were made and distributed to public in attendance at meeting.

Lombardo summarized that he had been through the Urbelis, Pomeroy and Hayes reports, deposition transcripts, memos, Board minutes and supporting documents related to the Marchand case. He noted that he has known Town Counsel Donna Brewer as professional for two and a half years.

He summarized his interpretation of the Hayes report saying it was fraught with issues and it is not a full investigation. Conclusions are based on limited research and analysis is speculation and not supported with facts. He continued that the Pomeroy report looked into several other items but not actions of Town counsel and Brewer was not interviewed so any references to Brewer are based on Hayes report. These reports do not give him information that he believes he can rely on regarding actions of Town counsel to base an appointment decision.

For the Urbelis report, Lombardo said it was much more thorough and a true investigation that referred to Town Meeting in 2010 and DA's letter about Hamilton's violation of the Open Meeting Law. He said interpretation of OML is cut and dry and that Urbelis and DA addressed what Board was confronted with at the time. Lombardo noted that after speaking with former Town Administrator Candace Wheeler, Brewer and former Selectmen to understand what occurred all believed the Town was facing a lawsuit imminently.

He suggested a reality check should have occurred regarding proper use of executive session and OML when there were a number of successive meetings but that litigation exemption was a legitimate reason. The caveats and expectations of this exemption were not met.

Lombardo noted that in his discussions with MIIA Defense Attorney Doug Louison regarding the settlement, Louison opined that the settlement is not an

indictment of the Town or anyone involved it was for financial reasons to close case.

He added that Brewer has provided sound legal advice, in a timely way for a low cost of service to Hamilton. Lombardo mentioned the difficulty in replacing that service, the bidding of Town counsel's services and recreating a relationship with a new attorney would create a hardship for Hamilton and he believes appointment of Brewer makes sense for the Town at this time.

David Carey, 8 Arabian Way, noted he was a Selectman during this period and that the Town has taken the necessary action by hiring a Town manager with authority to run the town that addresses the problem Hamilton formerly had with a Town administrator with no management authority.

Resident Jay Burnham mentioned scope of services in Urbelis report and legal issues related to Town Counsel Donna Brewer referencing information that stated there was not a litigation basis for OML, that OML required that Board have Marchand speak on his behalf, which was not done, that it was indeterminable that Town counsel had disclosed confidential information and Town counsel did not inform Selectmen properly.

He questioned why the Urbelis report was kept confidential for so long if it was debunked by the Town manager. Burnham noted that Urbelis was willing to debate the findings.

Burnham summarized that Town has come a long way since the turmoil and embarrassment with the Hamilton Police Department and had since moved forward with a five-member Board of Selectmen, hired a Town Manager and respected Police Chief, and increased community involvement and public awareness about what occurs in Town (i.e., OML violations, Patton property gift). He said to fully restore the community Hamilton should not take the convenient path of appointing Brewer.

Attorney Bill Bowler, former Selectman, spoke to the quality of work Brewer had provided Hamilton since 1998 as thoughtful, timely and fair. He summarized the Board's involvement with Leonard Kesten, MIIA defense attorney, who had hired the three individuals to do investigative reports and build a case against Atty Brewer and that Town counsel was the only defendant in the Marchand lawsuit not defended by MIIA. Also, that Selectmen had lost confidence in Kestin

and MIIA attorney Doug Louison had replaced him to represent the Town in the case.

Elaine Carey, 8 Arabian Way, mentioned how as a former HWRSD School Committee member she had been impressed with Brewer's guidance, wisdom and leadership, especially during the summer of 2003 when two Town Meetings were held to address regional school budget. She noted complexity of OML.

Bruce Wadleigh, Blueberry Lane, recommended the Board of Selectmen put Town counsel job out to bid. Bob Gray, Bay Road, referred to the Urbelis report and said he did not see how the Board based on the findings could have confidence in Brewer going forward.

Finance Committee chair John McWane referenced the findings in the Urbelis report but expressed his confidence in Town counsel and suggested mistakes made regarding OML could be understood. He expressed his support for Brewer and Lombardo in recommending Brewer's appointment.

Jean Towne, 20 Savoy Road, opined that Hamilton is through the police scandal and that a fresh start with Town counsel would work better for the Town with a vote of confidence by Town officials.

Scuteri spoke about not being on Board when executive sessions were violated, but she was a Selectman two years later when she spoke with Urbelis who questioned her about why the Town wanted an investigation in the middle of a lawsuit. She also reiterated Bowler's viewpoint about Kesten's handling of the case and his building of a case based on "advice of counsel" instead of doing a thorough investigation and his replacement by Louison. She also reiterated the fact that the Urbelis report was dependant upon the Hayes and Pomeroy reports and that Urbelis was prohibited from doing his own investigation.

She discussed how the Hays, Pomeroy and Urbelis Reports were pre-litigation and that during litigation, findings in the Hays and Pomeroy Reports were disproven or additional facts were provided. Referring to a deposition of Marchand's wife, she summarized Marchand's actions with his wife's niece and sister in-law, who (contrary to the Hays Report) Marchand had only met 2-3 times and the Mexico trip, the purchase of the knife, the use of FBI system, the intent of Marchand to take her away from her mother using a private plane to bypass customs, use of Hamilton police car when returning from Mexico trip and that we had now learned that police union attorney Joe Sandulli had told

Marchand not to go. Also mentioned was Marchand's fundraising actions regarding cupola proceeds for the public safety building, and that he went into Crosby's and asked the Manager for a \$1000 contribution and that Scuteri didn't feel Hays had addressed this event properly. Most substantial to Scuteri was an April 12, 2007 confrontation between Marchand and Attorney David Gabriel, which the BoS had learned of before going into Executive Session a week later. Pomeroy mentions the incident on page 55 of his Report but never investigated the event. Subsequent to the completion of the Urbelis Report, at Scuteri's request, Atty Kesten called Atty Gabriel and as reported by Kesten, Marchand had threatened Gabriel and Gabriel had thought Marchand was on something (Scuteri distributed Kesten's note to the Board). Walter Cullen, retired police chief, had taken Marchand off the case as a result of his later conversation with Atty Gabriel (which Cullen did not share with the BoS). Although Gabriel stated to Cullen that he did not want to file a complaint (just wanted Marchand off the case), Scuteri pointed out that if Gabriel had filed a complaint, arguably the Town would have been involved in litigation.

Scuteri said she supported Town manager in his recommendation to appoint Brewer as Town counsel and reiterated that Marchand case settlement substantiates that the Town was not guilty. She added that all documentation related to the Marchand lawsuit would be made available to the public.

Jeff Hubbard said he is representing the concerns of those who elected him and after some references to what occurred in the Marchand matter relative to Brewer and Urbelis report, suggested Lombardo give the Town the opportunity to put the Town counsel's job out to bid.

Lombardo responded that his business decision regarding Town counsel is based on research and experience devoid of emotion and that there would be differing opinions about his conclusion.

Johnson addressed the discussion referring to the special act that gives Town manager authority to appoint Town counsel, summarized that his experience with Brewer is she provides extraordinary legal services and he has not lost confidence in what Brewer has been asked to do as Town counsel, that her re-appointment should be a function of the quality of her advice across all of the town matters that she addresses, that he thought the three reports were deeply flawed and her re-appointment should not be about how executive sessions were held, that it is the Selectmens' responsibility to exercise reasoned judgment on the information provided by citizens and not just be a conduit for the public's

comments criticizing Brewer, and he is comfortable supporting Lombardo's recommended decision to appoint Brewer.

Stinson spoke to the special act noting it is clearly the Town manager's decision to appoint Town counsel. He commended Brewer's capability as an attorney, and said he wanted to support the Town manager but recommended for the sake of the Town that the Town counsel responsibility be put out to bid.

Neill addressed the discussion noting that that he had read the Urbelis report and his son is a police officer. He thought the Town had gone through a difficult time and that Hamilton should be put this behind it with the police department quickly becoming one of the finest in the state.

He referred to the mistakes regarding OML and said what he knows of the Selectmen on the Board at the time and Brewer, they and she would not have led the Town officials into an illegal meeting. Neill noted the complexities of the OML and mentioned the similarities with the Marchand case with what occurred with the Susan Snow case with the Hamilton Fire Department and that there was no OML violation in this case because in fact, the Town was sued.

Discussion ensued about whether or not Lombardo would be compelled to bid out Town counsel services, that Board does not have authority in this decision, and Lombardo's interest in receiving input from the Selectmen on the Town counsel appointment to ensure his decision is reasoned and well thought out.

Neill entertained a motion to support Town Manager Michael Lombardo's decision to appoint Donna Brewer as Town counsel. Scuteri so moved. Johnson seconded motion. Discussion ensued where Scuteri suggested they end the conversation. HAND VOTE: 3-2-0 with Neill, Scuteri and Johnson in favor, Stinson and Hubbard opposed.

There was a five-minute recess and Board reconvened.

Vote to Place Debt Exclusion Question on the November 6 Ballot for HWRSD Capital Projects

Discussion ensued about placing two debt exclusion questions on the November 6 ballot for Hamilton's share of cost to replace roofs at Cutler and Winthrop Schools, replace windows at Cutler and Buker Schools, install insulation and a

fire suppression system at Buker School and complete repair and reconstruction projects in all buildings of HWRSD.

These questions address as much as \$4 million in costs and would require a simple majority vote. Discussion was about possibility of SBAB reimbursement for part of the Cutler School roof (i.e., \$216,000), and Community Preservation Act funding for Patton estate playing fields and playground, as well as Patton Park swimming pool.

Also, that enrollment in the regional school district for Hamilton in FY'13 is expected to be 67%. Lombardo noted that Hamilton's allocation for the two bonds for a median household for the cost of these projects would be \$31 a year per house.

Neill entertained a motion to place the debt exclusion articles on the Town Meeting warrant for Proposition 2 ½ debt exclusion ballot questions. Johnson so moved. Scuteri seconded motion. VOTE: Unanimous.

Neill read the motions:

Proposition 2 ½ Debt Exclusion Ballot Question – Cutler School Project

Shall the Town of Hamilton be allowed to exempt from the provisions of proposition two and one-half, so-called, the amounts required to pay the Town's allocable share of the bond issued by the Hamilton-Wenham Regional School District for the purpose of paying costs of replacing the roof at the Cutler Elementary School, located at 237 Asbury Street, in Hamilton, including the payment of all costs incidental or related thereto?

Proposition 2 ½ Debt Exclusion Ballot Question – Various Capital Projects

Shall the Town of Hamilton be allowed to exempt from the provisions of proposition tow and one-half, so-called, the amounts required to pay the Town's allocable share of the bond issued by the Hamilton-Wenham Regional School District for the purpose of paying costs of replacing the Winthrop School roof, replacing the windows at the Cutler and Buker Schools, and installing insulation and a fire suppression system at the Buker School and completing other repair and reconstruction projects in all buildings of the HWRSD, including the payment of all costs incidental or related thereto?

Neill entertained a motion to place before the voters of the Town of Hamilton at the fall election November 6, 2012 the two referendum questions just read. Johnson so moved. Hubbard seconded motion. VOTE: Unanimous.

Other business

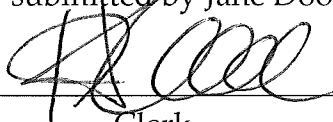
The next Board of Selectmen's meeting will be held on August 13, 2012 with Johnson to chair. Selectmen will possibly consider appointments to Hamilton Development Corporation at this meeting. Discussion ensued with Hubbard and Johnson agreeing to meet and determine a model for property tax forecast for the next five years. Also mentioned as part of long range planning was for the Board to ponder combining the Hamilton and Wenham police departments. Neill suggested this request should come from Lombardo.

Discussion ensued about Special Town Meeting warrant hearing on September 9, warrant would be closed on September 10 and warrant goes to the printer on September 14.

Neill entertained a motion for the Board to adjourn at 9:18 p.m. Scuteri so moved. Johnson seconded motion. VOTE: Unanimous.

Respectfully submitted by Jane Dooley, Minutes Secretary

ATTEST: _____

 8/13/12
Clerk

